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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANKLIN GURROLA,

Defendant and Appellant.

F067100

(Super. Ct. No. VCF274506)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. H. N. Papadakis, Judge.†

Conness A. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Charity S. Whitney, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Poochigian, Acting P.J., Franson, J., and Peña, J.

†Retired judge of the Fresno Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

INTRODUCTION

A jury convicted defendant Franklin Gurrola of assault with a deadly weapon. Following a bifurcated proceeding concerning the prior allegations, defendant was thereafter sentenced to a total term of 14 years in prison.

On appeal, defendant contends the trial court erred in imposing the prior serious felony and prior strike enhancements because it did not make the required express findings on those allegations, resulting in an unauthorized sentence. He maintains those enhancements to his sentence must be stricken. We disagree and will affirm.

SUMMARY OF FACTS AND PROCEDURE

The People's Case

On October 5, 2012, Kelli Holden heard an altercation outside her house. Exiting her home, she saw defendant—her neighbor—and another man yelling at one another. Defendant's mother was nearby, trying to stop the two individuals from fighting. Kelli Holden saw a knife in defendant's right hand and asked her husband Greg to call 911. She observed defendant trying to stab the other individual with the knife.

Greg Holden called 911 when his wife indicated defendant had a knife. He stepped outside his residence when the operator asked him if he could see the individuals involved in the altercation. Greg Holden saw defendant and another individual, who was wearing red shorts. Defendant had a knife and was trying to "cut" the other man. That man was not armed.

Soon sirens could be heard in response to the 911 call. By the time officers arrived, defendant was no longer in the area.

Police officer Joshua Lowry responded to the call. He observed a male subject, later identified as Salomon Cruz, wearing red shorts and tennis shoes; he had no shirt. There was a laceration on Cruz's left side, on his abdomen above the hip. It was about six inches long.

Before Officer Lowry left the area, Julie Gurrola, defendant's mother, gave him some property that had been inside her home: a white tank top, a silver iPod, and a phone charger. That property was given to, and accepted by, Cruz.

No one else involved in the altercation was found that evening. Officers were unable to locate a knife.

The Defense Case

Salomon Cruz testified that he does not know defendant or anyone named Frank Gurrola. Cruz was "hanging out" and drinking with his friend Carlos Ortiz that night. He heard a confrontation nearby, and as he went to investigate, he tripped over a curb. He injured his left side, getting a "road rash" or scrape injury. Cruz denied being in any altercation himself.

The Legal Proceedings

Defendant was charged with committing an assault with a deadly weapon (Pen. Code, § 245, subd.(a)(1)).¹ It was further alleged defendant had suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) following a 2006 conviction for assault with a deadly weapon and participation in a criminal street gang (§§ 245, 186.22), a prior serious felony based upon the same 2006 conviction (§ 667, subd. (a)(1)), and a prior prison term (§ 667.5, subd. (b)) for the 2006 conviction, as well as convictions in 2003 (former §§ 12020, subd. (a)(4), 12025, subd. (a)(2)) and 2005 (former § 12021, subd. (a)(1)). Defendant pled not guilty and denied all allegations.

Following jury trial, defendant was convicted of one count of assault with a deadly weapon, to wit, a knife. The jury was excused and a court trial was held on the priors. Subsequently, defendant was sentenced to the aggravated term of eight years for the assault count, five years for the prior serious felony conviction, and an additional year for a prior prison term, for a total of 14 years. A timely notice of appeal followed.

¹Further statutory references are to the Penal Code unless otherwise indicated.

DISCUSSION

Defendant argues the trial court erred in imposing sentence enhancements for a prior serious felony and prior strike because it failed to make the required findings on those special allegations.² Plaintiff counters the trial court's statements at sentencing clearly indicate it had impliedly found the prior serious felony conviction and prior strike to be true.

The Bifurcated Court Trial and Sentencing

Following the jury's verdict, the matter of defendant's priors was addressed:

“[THE COURT:] Remaining issue before the court is the allegation that was bifurcated, 667.5(b) allegation. [¶] Court has received an item of evidence stipulated. It will be Exhibit 1. Kind of strange to go through a trial and have one Exhibit. [¶] Understand the matter is going to be submitted on that exhibit.

“[DEFENSE COUNSEL:] Yes, your Honor. At this time, based on that exhibit, we'll be moving for a judgment of acquittal under 1118 and submitting on the—

“THE COURT: All right.

“[DEFENSE COUNSEL:] —exhibit.

“THE COURT: That motion will be denied in that there is sufficient evidence. [¶] Anything further on this?

“[PROSECUTOR:] No, your Honor, People submit.

“THE COURT: The court has reviewed the exhibit that's been presented, the photograph—this comes directly from the prison, it's a certified document. Court finds the allegation true, and it has been established. [¶] Anything further on that?

“[DEFENSE COUNSEL:] On that, no....”

The minute order pertaining to this proceeding, dated March 14, 2013, indicates: “Prior convictions found true.”

²Defendant does not dispute that a conviction for assault with a knife while participating in a criminal street gang would qualify as a prior strike and prior serious felony.

About a month later, at sentencing, the court stated the following:

“[THE COURT:] With that, then, the court having reviewed the report and recommendation of the probation officer,^[3] based upon your conviction by a jury on the 18th of March of this year, case 274506, you were found guilty of violating Section 245(a)(1) ..., special allegations were all found to be true, in consideration of the factors that were set forth, as to factors in mitigation, none are even suggested by probation, and the court sees no factors in mitigation here.

“As to factors in aggravation, poor performance on parole, poor performance on probation previously—

“THE DEFENDANT: Excuse me, sir.

“THE COURT: —multiple violations involving violence, multiple violations involving weapons, the absolutely numerous prior convictions, juvenile adjudications, one, two, three, four—whatever, adult convictions one, two, three, four, five, six, seven, obviously, pursuant to [California Rules of Court,] Rule 412, the aggravating factors outweigh anything that might have been presented in mitigation.

“Your parole officer is not pleased with you at all, as pointed out by the prosecution.

“This was an attack with a knife. There are no excuses for these actions. The court finds that the aggravated term is appropriate in this case.

“Therefore, it will be the order of the court, judgment will be pronounced today that as to Count 1, you’ll be committed to state prison for the aggravated term of eight years pursuant to [section] 1170.12(c)(1) ... plus an additional consecutive five years pursuant to [section] 667(a)(1) ... plus an additional and consecutive one year pursuant to [section] 667.5(b) ... for a total term of 14 years”

The abstract of judgment reflects a five-year enhancement imposed pursuant to section 667, subdivision (a)(1), and a one-year enhancement imposed pursuant to section 667.5, subdivision (b).

³The “abbreviated” probation report filed that same date reflects the strike prior and the serious felony prior, in addition to the prison prior, were “Found True.” In a later portion of the report, the following inaccurate statement appears: “The *jury* has also found true violations of special allegations ... section 1170.12(c)(1)—Prior Strike, ... section 667(a)(1)—Prior Serious Felony, and ... section 667.5(b)—Prior Prison.” (Italics added.)

The Law and Analysis

Section 1158 provides as follows:

“Whenever the fact of a previous conviction of another offense is charged in an accusatory pleading, and the defendant is found guilty of the offense with which he is charged, the jury, or the judge if a jury trial is waived, must unless the answer of the defendant admits such previous conviction, find whether or not he has suffered such previous conviction. The verdict or finding upon the charge of previous conviction may be: ‘We (or I) find the charge of previous conviction true’ or ‘We (or I) find the charge of previous conviction not true,’ according as the jury or the judge find that the defendant has or has not suffered such conviction. If more than one previous conviction is charged a separate finding must be made as to each.”

Defendant contends the trial court’s failure to make express findings regarding the prior strike and serious felony allegations precluded the trial court from imposing sentence based upon those allegations. He claims the effect of the trial court’s failures in this regard is the same as the trial court finding those allegations “not true.” (*People v. Gutierrez* (1993) 14 Cal.App.4th 1425, 1440.)

However, the trial court did not fail to make the findings. Rather, the trial court’s express finding with regard to the prior prison term allegation⁴ means the trial court impliedly found the serious felony and strike prior allegations to be true as well.

In *People v. Clair* (1992) 2 Cal.4th 629, our Supreme Court held that the trial court “impliedly—but sufficiently—rendered a finding of true as to the allegation when it imposed an enhancement *expressly* for the underlying prior conviction.” (*Id.* at p. 691, fn. 17.) There, the defendant was charged with murder and two counts of burglary. The information alleged he had been previously convicted of a serious felony. (*Id.* at pp. 644-645.) The murder and burglary charges were tried to a jury, which returned guilty verdicts. The defendant waived jury trial on the prior serious felony allegation and

⁴A sentence enhancement under section 667.5, subdivision (b) “requires proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction.” (*People v. Tenner* (1993) 6 Cal.4th 559, 563.)

consented to trial by the court. The trial court did not expressly find the prior allegation was true, but it imposed a five-year prison term for the prior serious felony conviction. (*Id.* at p. 645.) In *People v. Chambers* (2002) 104 Cal.App.4th 1047, the defendant requested a bench trial and was convicted as charged. The court's minute order simply indicated the defendant was found guilty, but it failed to address a firearm enhancement. At sentencing, the trial court imposed a term for the enhancement as if it had been found true. (*Id.* at p. 1049.) The *Chambers* court determined the trial court had impliedly rendered a true finding on the firearm enhancement when it imposed a term based upon that enhancement. (*Id.* at pp. 1050-1051.)

In the present case, we conclude that although the trial court did not make separate express findings regarding the serious felony or the strike prior, it impliedly made those true findings when it referenced the section 667.5, subdivision (b) true finding. This is so because, as alleged in the information, both the serious felony and the strike prior relate to defendant's 2006 conviction for assault with a deadly weapon (knife) while participating in a criminal street gang. That information is specifically listed under the prior prison term special allegation. The trial court did expressly reference exhibit 1 in making that finding. Exhibit 1 comprised certified documents from the California Department of Corrections and Rehabilitation, including a chronological history, an amendment to an abstract of judgment dated February 18, 2010, bearing Tulare Superior Court case No. PCF155509A, the abstract of judgment dated February 16, 2006, in Tulare Superior Court case Nos. PCF155509A, PCF111646-03, and PCF137922, an FBI fingerprint card, and a photograph of defendant. Hence, the trial court's true finding on the prison prior is based upon a single abstract of judgment encompassing three separate felony convictions occurring on three separate conviction dates. (See *People v. Williams* (2002) 99 Cal.App.4th 696, 701 [because strike prior and serious felony enhancement were premised upon same conviction, jury's true finding designating prior conviction as a strike prior "encompassed" the enhancement as a serious felony].)

Further, at the time of sentencing, imposition of those enhancements appears to have been anticipated. For example, defense counsel made reference to defendant's "serious violent strike and his prior" as well as the prior prison term in anticipation of the oral pronouncement of sentence. The prosecutor, in arguing the recommendation for a total sentence of 14 years was appropriate, indicated defendant was to be "punished for his strike ... he's being punished for a nickel." And finally, the court stated the "special allegations were all found to be true" and referenced defendant's lengthy criminal history before imposing its sentence, including the enhancements challenged here.

In sum, like the *Clair* and *Chambers* courts, we find the trial court impliedly, but sufficiently, rendered true findings as to the prior strike and prior serious felony allegations. As a result, there was no error.

DISPOSITION

The judgment is affirmed.